

BAIL SLIP

The Appellants herein/accused Nos.1 & 2 namely 1)M.Murugan, S/o.Murugan, aged about 26 years/2011, 2) P.Venkatesan, S/o.Poovan aged about 26 years/2011 were directed to be released on bail as per the order of this Court dated 29.04.2011 made in CRL MP No.1 of 2011 in CRL A No.282 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.04.2019	Pronounced on: .04.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.282 of 2011

1. M.Murugan,
S/o.Murugan,
Ambedkar Colony,
Dharmapuri District.

2. P.Venkatesan,
S/o.Poovan,
Ambedkar Colony,
Dharmapuri District.

... Appellants/Accused 1 & 2

/versus/

State Rep By:-

The Inspector of Police,
Dharmapuri Town Police Station,
Dharmapuri District.

(Crime No.1756 of 2009)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence with fine imposed against the appellants/accused dated 30.03.2011 in S.C.No.123 of 2010 by the Learned Additional Sessions Judge, (Fast Track Court), Dharmapuri.

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate

J U D G M E N T

Aggrieved by the conviction and sentence imposed by the

trial Court holding the 1st appellant guilty of offence under section 307 I.P.C and the 2nd appellant guilty of offence under section 307 r/w 109 I.P.C and sentenced to undergo 7 years Rigorous Imprisonment and fine of Rs.1,000/- each and in default Simple Imprisonment for 6 months each, the present appeal is filed.

2. The brief facts leading to this appeal:

On 28.09.2009, at about 20.00 hrs, PW-4 Tr.Durairaj, Sub-Inspector of Police attached to Dharmapuri Town Police Station received intimation over phone from the Government Hospital, Dharmapuri about a medico legal case. On receipt of the intimation he went to the hospital and found Maan @ Madhesh injured and getting treatment. Maan @ Madhesh was not in a position to talk. So, he recorded statement of Kuttiappan father of Madhesh. Returned to Police station and registered the F.I.R in Crime No.1756 of 2009 for offences under sections 341 and 307 I.P.C against Murugan and Venkatesan. Forwarded the First Information Report (Ex.P-2) to the Inspector of Police for further action.

3. PW-7 Mr.Rathnakumar, Inspector of Police took up the investigation of the case and visited the place of occurrence. Prepared a rough sketch of the SOC (Ex.P-8). Prepared the observation mahazar (Ex.P-3). The police arrested the accused and recorded the confession statement (Ex.P-4) given by Murugan. A pen knife (M.O.1) used by A-1 to stab PW-2 (Maan @ Madhesh), the blood stained shirt (M.O.2) and banian (M.O.3) were recovered from A-1/Murugan under mahazar (Ex.P-5), in the presence of witnesses Vasu (PW-5) and Ravi (not examined). The wound certificate of P.W-2 (Maan @ Madhesh) was obtained from Dr.BalasubraMaaniam (PW-6). PW.7 filed the final report against A-1 (Murugan) and A-2 (Venkatesan) for charges under sections 341 and 307 I.P.C.

4. The trial Court, based on the materials placed by the prosecution collected during the course of investigation framed charges under section 307 I.P.C as against A-1 for his attempt to murder Maan @ Madhesh and charges under section 307 r/w 109 IPC as against A-2 for aid and abetting A-1/Murugan for the attempt to murder Maan @ Madhesh.

5. PW-1 Kuttiappan has deposed about the previous enmity between him and his brother Murugan family. On 28.09.2009, he along with his son (PW-2), another brother

Madhappan (PW-3) and others participated in the funeral procession his brother's son Muthu. While nearing the cremation ground, quarrel erupted. His son PW-2 coming behind him was caught by A-2 (Venkatesan) and A-1 (Murugan) stabbed him on his stomach, neck and chest ribs with a pen knife. Hearing the scream of PW-2 (Maan @ Madhesh), he and his other son Murali rushed towards PW-2. The assailants ran away. PW-2 (Maan @ Madhesh) was taken to the hospital and thereafter went to the police station and gave the complaint Ex.P-1.

6. PW-2 Maan @ Madhesh has deposed that on that day, while he was at the cremation ground attending the funeral of Muthu, due to the previous enmity A-2/Venkatesan came and caught hold of him from behind. A-1/Murugan took out a pen knife and stabbed him. He has identified M.O.1 pen knife as the weapon used by A-1/Murugan to stab him. PW-3, Madhappan, who is brother of PW-1/Kuttiappan has corroborated the evidence of PW-1 (Kuttiappan) and PW-2 (Maan @ Madhesh).

7. PW-5 Vasu is the witness, who has identified the accused persons to the police and witness to the preparation of observation mahazar, confession statement and recovery mahazar. He has identified the pen knife recovered, based on the confession statement of the accused.

8. PW-6 Dr.Balasubramaiaam is the doctor who has treated PW-2 (Maan @ Madhesh) for the injuries he sustained. He has issued the wound certificate Ex.P-6. The following injuries were noted on PW-2 (Maan @ Madhesh).

- i). Lacerated injury 3 x 2 x 2 cm on the left neck.
- ii). Lacerated injury 3 x 2 x 1 cm left chest.
- iii). Stab injury 5 x 3 cm on the anterior abdominal wall.

9. The Doctor has opined that the first two injuries are simple in nature. The third injury is grievous in nature.

10. Since the above evidence of the prosecution witnesses found to be sufficient to hold the accused guilty, the trial Court has sentenced them to undergo 7 years Rigorous Imprisonment and fine of Rs.1,000/- each, in default simple imprisonment for 6 months each, as stated above.

11. In the appeal, the learned counsel appearing for the appellants would submit that, the trial Court failed to appreciate the evidence in proper perspective. The evidence for

the defence as spoken by DW-1 and DW-2 were not at all considered by the trial court. On the date of occurrence, the appellants were not at present near the alleged place of crime. In fact, the prosecution witnesses are not consistent and cogent regarding the alleged place of crime. In the wound certificate Ex.P-6, the place of occurrence is mentioned as the place of the injured. PW-1 Kuttiappan, in his complaint (Ex.P-1) has mentioned that the incident took place in the crematorium near PachaiaMmaan temple. Whereas, before the Court, in his deposition, he has said that at the entrance of the crematorium, he heard the scream of his son and rushed towards him. Quite contrary to these evidence, PW-2 the injured witness has deposed that he was standing about 25 feet away from the burial spot, when the accused attacked him. His father PW-1 (Kuttiappan) was 250 feet away from him.

12. The prosecution is not certain about the number of assailants. In the wound certificate, the doctor has recorded that the patient was conscious and orient. He informed three persons assaulted him at his place. Whereas, the police has prosecuted only two persons. It was pitch dark and admittedly, they were carrying petromax light. DW-2 has deposed that immediately after fight broke out, there was stone pelting. So, he took away the petromax light and left the place. Therefore, it is unsafe to convict the appellants based on the interested witnesses, who had animosity against the accused and their father, due to the break down of the marriage proposal between the sister of A1/Murugan and son of the PW-1's sister.

13. DW-1 Murugan, has deposed that his son (A-1) was taken by the police on the same day from his house. Therefore, the alleged arrest, confession statement and recovery of material objects are all make belief evidence. PW-5 (Vasu) is not a reliable independent witness. In the cross examination, he admits that as a ambulance driver he depend on the police for his livelihood. He signed on blank papers at the request of the police and he is not aware of any fact in connection with this case. He did not accompany the police to the cremation ground, nothing was recovered in his presence. Therefore, the confession and recovery based on confession fails for want of corroboration.

14. The learned counsel for the appellants further submitted that, even assuming that the injuries found on PW-2 was caused by A-1, they are not grievous hurt as defined under section 320 I.P.C. The nature of injury in the legal sense is different from the nature of injury in the medical sense. For

the said reasons, the learned counsel would submit that, the trial Court judgment is liable to be set aside and the appellants should be acquitted.

15. Per contra, the learned Government Advocate for the respondent/state would submit that, the prosecution has proved the guilt of the accused through the evidence of the injured witness PW-2 (Maan @ Madhesh), the wound certificate (Ex.P-6), the recovery of weapon and the blood stained cloth from A-1 (Murugan). The accused had no explanation for the blood stains in his cloth and the weapon with blood stains. The evidence of the injured witness PW-2 (Maan @ Madhesh) is corroborated by the evidence of PW-1 (Kuttiappan) and PW-3 (Madhappan). Both the prosecution witnesses as well as the appellants are closely related persons. Therefore, the evidence of PW-1 to PW-3 cannot be discarded, because they are closely related.

16. PW-2 Maan @ Madhesh, immediately after sustaining injuries, lost conscious and regained the conscious only on the next day. The causal entries made in the Accident Register or wound certificates cannot be a reason to disbelieve the case of the prosecution. It is not clear from Ex.P-6 who gave the information to the doctor about the history of injury. Even assuming PW-2 Maan @ Madhesh was conscious and he gave the information to the doctor that three persons assaulted him, the final report filed after due investigation will prevail over the entries made by the doctor in the wound certificate.

17. Regarding the place of occurrence, the learned Government Advocate for the respondent/state would contend that, the witnesses are rustic witnesses and villagers. The facts elicited through their examination reveals that after the elopement episode of the A-1 sister, there was misunderstanding between the family of PW-1 and the family of his brother DW-1. The accused persons are sons of PW-1 brothers. During the funeral procession of one Muthu who was one of the brothers son, quarrel started between these two families. Through the cross examination of the witnesses, it is elicited that the in the course of funeral procession, before reaching the crematorium, quarrel started between PW-1 and DW-1 and same was pacified by others. After the body reached the crematorium and others were inside the crematorium or near the entrance of the crematorium, A-1 (Murugan) and A-2 (Venkatesan) came to the crematorium and stabbed PW-2 (Maan @ Madhesh). Actually, there is no difference or contradiction in the prosecution evidence regarding the place of occurrence. The crematorium, compound wall of the crematorium, PachaiaMaan Temple are all in close proximity. The witnesses have identified the same spot in different way. Therefore, the learned Government Advocate for the respondent/state would submit that, the prosecution case does not suffer any infirmity regarding number of assailants or place of occurrence. The plea doubting the prosecution case in

respect of SOC is only an illusion. Hence, submit that the trial Court finding has to be confirmed.

18. PW-2 is the person injured. His father PW-1 the defacto complainant and his uncle PW-3 are eye witnesses to the occurrence. The accused persons are none other than the brother's sons of PW-1 and PW-3. It is an admitted fact that due to the aborted marriage arrangement with DW-1 daughter with their sister's son misunderstanding has crept in among the family members. The prosecution parties and the accused parties are blood relatives know to each other and they were in feud are admitted facts. The plea of the appellants counsel is that on that day there was no sufficient lighting since the person who brought the petromax light examined as DW-2 has deposed that immediately after fight between the groups broke out, there was pelting of stone so, he took the petromax light and left the place. This contention does not carry any merit. The doubt raised about the identity of the accused persons due to darkness is unsustainable since the victim and assailants are known persons and related to each other.

19. The recovery of weapon is questioned by the appellants on the ground that the accused persons were taken into custody on the same day itself. They were kept under illegal custody and shown arrest and recovery on the next day. To buttress his submission, the appellants rely on the evidence of DW-1, the father of A-1 and the admission of PW-5 (Vasu) in his cross examination that he was asked to sign blank papers by the police and nothing recovered from his presence. This contention also liable to be rejected since DW-1 is father of A-1 and being an interested witness, he has deposed that his son was taken from the house on the day of incident itself. There is no evidence to corroborate this allegation.

20. As far as the testimony of PW-5, witness for the recovery, no doubt, in the cross examination, he has turned turtle. While he has examined in chief on 09.02.2011, he has supported the prosecution case as found in his previous statement recorded under Section 161 Cr.P.C. On that day, the accused have not cross examined him. Later, on petition, this witness was re-called and cross examined on 24.02.2011. During the cross examination, he has deposed contrary to his testimony in chief examination. It is very obvious why he has turned turtle during the cross examination after supporting the prosecution in his chief examination.

21. The Learned Counsel for the appellants relying upon a unreported judgment of this Court rendered in Mariappan Vs. State (date of judgment 25.10.2016 by Dr.Justice P.Devadass) contented that whether the injury/hurt is simple or grievous does not depends on the Doctor's evidence, medical opinion. But, it is based on the nature of the injury, as given in Sections 319 and 320 I.P.C., as the case may be. Medical evidence only assist the Court to classify the injury. The nature of injury in the legal sense and medical sense are different.

22. The said submission and judgement has no relevance to the facts of the case since the accused persons were not charged and tried for any of the offences under Sections 323 to 335 of I.P.C. They are charged and tried for offence under Section 307 of I.P.C., for attempt to murder Maan @ Madhesh.(PW-2).

Section 307 of I.P.C reads as below:

307. Attempt to murder:- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

23. Therefore, causing hurt with intention or knowledge that the act would have caused death of the injured person is the required ingredient. Whether the said hurt is simple in nature or grievous in nature is immaterial to attract offence under section 307 of I.P.C. The Court has to consider the intention and knowledge of the assailant, the nature of the weapon used, the site of the attack intended, the actual site of injury and the number of injuries caused to decide under which Section the act of the accused fall.

24. As far as, the facts of this case as spoken and proved by the prosecution, A-1 and A-2 were called to the place of occurrence by DW-1 over phone, after trouble started in the funeral procession. In the procession, while PW-1 (Kuttiappan) and PW-3 (Madhappan) along with others were going ahead inside the crematorium, PW-2 (Maan @ Madhesh) who was following behind, was caught hold by A-2 (Venkatesan) and stabbed by A-1 (Murugan) on the neck, chest and abdomen. The size of the wound is mentioned in the certificate Ex.P-6. The weapon is identified

by the victim PW-2 (Maan @ Madhesh). The intention of the accused to cause hurt on the vital parts of the body could be drawn from the site of attack. Hence, the finding of the Court below holding the first appellant guilty of offence under section 307 of I.P.C and the second appellant for offence under section 307 r/w 109 of I.P.C is upheld.

25. At the same time, the term of imprisonment for the said offence requires modification considering the age of the appellants, their economic and social status, the reason for the attack, the place of occurrence and the relationship between the accused and the victim. Accordingly, while confirming the conviction, the sentence imposed on the accused by the trial Court is modified as below:

Name of the accused	Offence found guilty	Sentence imposed by the Trial Court	Sentence as modified by the High Court
Murugan A1	307 of I.P.C	7 years R.I and fine of Rs.1,000/-, in default 6 months S.I.	2 years R.I and fine of Rs.1,000/-, in default 6 months S.I.
Venkatesan A2	307 r/w 109 of I.P.C	7 years R.I and fine of Rs.1,000/-, in default 6 months S.I.	1 year R.I and fine of Rs.1,000/-, in default 6 months S.I.

26. In the result, the Criminal Appeal is partly allowed. The finding of the Trial court on conviction is confirmed. The sentence of imprisonment is modified as above. The Bail bond stands cancelled. The appellants are directed to surrender to undergo the remaining period of sentence as modified. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar(Insp.Cell)

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Sub Assistant Registrar

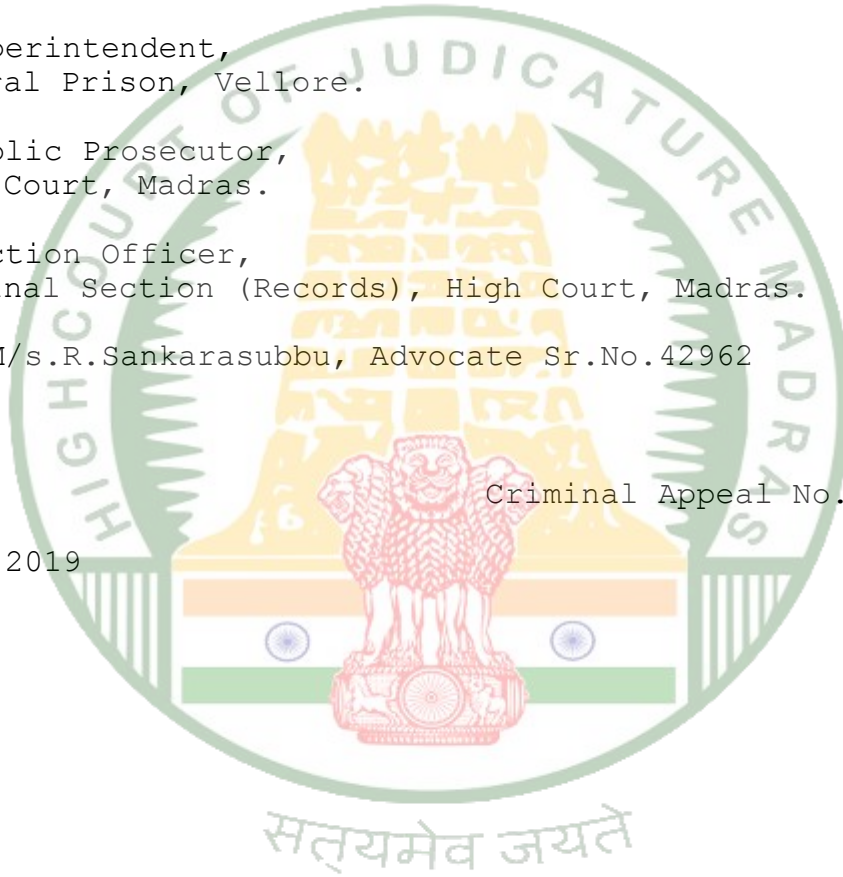
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To,

1. The Judicial Magistrate No.I, Dharmapuri.
 2. Do through The Chief Judicial Magistrate,
Dharmapuri at Krishnagiri.
 3. The Additional Sessions Judge, (Fast Track Court),
Dharmapuri.
 4. The Inspector of Police,
Dharmapuri Town Police Station, Dharmapuri.
 5. The Superintendent,
Central Prison, Vellore.
 6. The Public Prosecutor,
High Court, Madras.
 7. The Section Officer,
Criminal Section (Records), High Court, Madras.
- +1 cc to M/s.R.Sankarasubbu, Advocate Sr.No.42962

SAI (CO)
CSL/07.06.2019

judgment in
Criminal Appeal No.282 of 2011



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